IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 140 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESH GOVINDLAL CHOTAI

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 140 of 2001

MR YOGESH S LAKHANI for Petitioner No. 1

MR MUKESH R SHAH for Respondents No. 1-4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/01/2002

ORAL JUDGEMENT

Heard Mr.Y.S.Lakhani, learned advocate appearing on behalf of the petitioner and Mr.M.R.Shah, learned advocate for respondent Nos.1 to 4.

#. Rule. Mr.M.R.Shah, learned advocates for the respondents waive service of Rule on behalf of the respondents. Today, with the consent of learned advocates for the parties, this matter is taken up for final hearing.

#. The brief facts giving rise to the present petition are as under :-

The petitioner joined with respondent No.3 as a casual Store Helper on daily wage basis and despite the fact that he had worked for 1900 days, respondent No.3 has orally terminated the services of the petitioner and therfore the petitioner had raised raised an industrial dipsuted before the respondent No.2 and concliation procedings were held. Thereafter, the responnet No.2 has submitted failure report to the respondent No.4. The respondent No.4 has passed roder on 30th October, 2000 while exercising the powers under Section 12[5] of the Industrial Disputes Act, 1947. The repsondent No.4 having considering the failure of conciliation report dated 29th August, 2000 received from the Assistant Labour Commissioenr [C], Adipur, Kachchh which was received by the respondent No.4 on 14th September, 2000, come to the conclusion that prima facie this Ministry does not consdier this dispute fit for adjudication for the following reasons :-

"It is reported tha the workman has not worked for 240 days in the preceeding 12 months. He is not eligible for protection under the ID Act."

#. Learned advocate Mr.Y.S.Lakhani, appearing on behalf of the petitioner has submitted that the respondent No.1 has no power to examine the merits of the dispute which has been raised by the petitioner. But the authority has to only see that whether there exists any dispute or not but the authority cannot examine the merits of such dispute. Mr.Y.S.Lakhani, learned advocate has also relied upon two decisions, of which, one is of the Apex Court reported in case of TELCO CONVOY DRIVERS MAZDOOR SANGH & OTHERS V. STATE OF BHIHAR AND OTHERS reported in AIR 1989 SC pg.1565 and another is rendered by this Court in case of HARDESH KUMAR RAJARAM VS. K.V.B. UNNI & ORS reported in 2000 [3] GLH 196.

#. Learned advocate Mr.M.R.Shah, appearing on behalf of the respondent No.1 has submitted prima facie the respondent No.1 has examined the dispute and if the petitioner has not satisfied the basic condition for

compliance of Section 25 F, in that case, the respondent No.1 is entitled to enter into dispute upto prima facie stage on merits and therefore the order passed by the respondent No.1 is legal and valid.

#. I have heard the submissions of learned advocates for the parties. The controversy involved in the matter is whether while passing the order by the respondent No.4 on 30th October, 2000, came to the conclusion that not to refer the dispute for adjudication on the ground that the petitioner was given temporary appointment for specific period. More so, the authority has also examined the dispute that the petitioner has not completed 240 days continues service in respondent No.3 in a year and hence no dispute. Considering these aspects of the matter, in view of this court, these are clear findings and conclusion so arrived, is based on appreciation of merits which is not within jurisdiction of the respondent No.4. However, the respondent No.4 has to see only whether any industrial dispute between the parties exists or not but the authority cannot determine and / or adjudicate the merits of the dispute between the parties. Moreover, two conclusion arrived by the authority that he was temporary appointed for specific period and 240 days have not been completed, seems to have arrived on appreciation of merits which in fact, beyond the jurisdiction of the concerned authority. The decision of the Apex Court as relied upon by learned advocate Mr.Lakhani rendered in case of Telco Convoy Drivers Mazdoor Singh & others v. State of Bihar and other reported in AIR 1989 SC pg.1565, it is held by the Apex Court that while exercising the powers under Section 10[1], functions of the appropriate Government is an administrative function and not judicial or quasi judicial function and that while performing this administrative function, the Government cannot delve into merits of the disputes nor can determine the dispute, which would certainly be in excess of the powers conferred on it by Section 10 of the I.D.Act. It is true that while considering the question of making the Reference under Section 10 [1], the Government is entitled to form an opinion as to whether an industrial disputes exists but formation of opinion on appreciation of merits as to whether any industrial dispute exists, would be beyond the scope of the powers. This proposition is also discussed by this Court in one recent decision rendered in case of HARDESH KUMAR RAJARAM V. K. V. B. UNNI AND OTHERS which is reported in 2000 [3] GLH 196.

#. Therefore, having regards to the observations made by the Apex Court as well as this Court, according to my

opinion, the respondent No.1 has exceeded its jurisdiction while refusing to make a Reference and examination of merits of the dispute, is unjust on the part of the respondent No.1 and therefore, the order passed by the respondent No.1 dated 30th October, 2000 requires to be quashed and set aside.

#. In the result, present petition succeeds and the same is allowed accordingly. The order passed by the respondent No.1 dated 30th October, 2000 is hereby quashed and set aside with direction to the respondent No.1 to reconsider the case of the petitioner afresh in light of the observations made by the Apex Court as well as this Court reported in AIR 1989 SC 1565 and 2000 [3] GLH 196 and to pass appropriate orders under Section 10 of the Industrial Disputes Act, 1947 within period of two months from the date of receipt of the writ of this order. Rule is made absolute with no order as to costs. Direct Service is permitted.

Date : 18-1-2002 [H.K.RATHOD, J.]

#kailash#